APPEAL NO. 032492
FILED OCTOBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 28, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, third, and fourth quarters. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant's appeal contains additional documentation which would purportedly show that he is entitled to SIBs. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. *See generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the claimant is not entitled to first, second, third, and fourth quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)) establish the requirements for entitlement to SIBs. At issue was whether the claimant had no ability to work during the qualifying periods. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant argues that the hearing officer erred by not giving presumptive weight to the designated doctor's impairment rating (IR) certification, which, the claimant contends, "indicat[es] that the patient was not able to work." In support of his contention, the claimant cites Rule 130.110, regarding return to work disputes during SIBs. Rule 130.110 provides:

> (a) This section applies only to disputes regarding whether an injured employee whose medical condition prevented the injured employee from returning to work in the prior year has improved sufficiently to

> allow the injured employee to return to work on or after the second anniversary of the injured employee's initial entitlement to [SIBs].

Because this case involves entitlement to first through fourth quarter SIBs, Rule 130.110 is inapplicable.

The claimant complains that he was prejudiced in his pursuit SIBs, because a protracted IR dispute made him unable to look for work during the qualifying periods for the quarters at issue. The claimant did not raise this argument at the hearing below. We decline to address it for the first time on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSSELL RAY OLIVER, PRESIDENT
221 W. 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.

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Edward Vilano
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Gary L. Kilgore
Appeals Judge